
The Vote of Athena

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THE VOTE OF ATHENA¹

The vote of the jury in Aeschylus' *Eumenides*, which results in Orestes' acquittal, is explicitly said to be a tie (753, 795), but it has long been disputed whether Athena's vote for acquittal produces the tie or breaks the tie in favor of Orestes. The former view was argued at length by Hermann and is now generally accepted by German scholars;² the latter position was vigorously defended by K. O. Müller and has been commonly followed by English-speaking scholars.³ I am convinced that Hermann's view is the correct one, and I offer the following arguments in support of it. None of them will be wholly new, but my hope is that a clear delineation of all aspects of the problem may finally lay Müller's interpretation to rest.

Let us begin with the text. Athena decides to convene the new Areopagus to hear Orestes' case because, as she says (470-72), "the matter is rather large if a mortal thinks to decide it, nor is it right (*θέμις*) for me to judge a case of homicide." Neither in these words nor in any of the later references to the jury⁴ is there any indication whether or not Athena as presiding officer will vote with the court when she instructs them (709) to "take up a voting-pebble and judge the case."⁵ The

¹ For criticism and advice concerning this paper I am grateful to the late Douglas Young, with whom I both conversed and corresponded on the matter. A version of the paper was read at the annual meeting of the American Philological Association in St. Louis, December 30, 1973.

² G. Hermann, *Aeschyli Tragodiae* II, 623-29 and *Opuscula* VI.2, 189-99. See also, e.g. Wilamowitz, *Aischylos-Interpretationen*, 183-85; Lesky, *Die tragische Dichtung der Hellenen*³, 130 n. 95; and Groeneboom, commentary on *Eumenides*, pp. 201-2.

³ K. O. Müller, *Dissertations on the Eumenides of Aeschylus*² (Eng. tr., Cambridge 1853) 149-50 and 215-19. See also, e.g. Verrall, *The Eumenides of Aeschylus*, xxv-xxx and notes ad loc.; G. Thomson, *The Oresteia*² II, 220-21; and Lloyd-Jones, *The Eumenides by Aeschylus*, 58. Kitto (*Poiesis*, 19-20) is an exception to this division.

⁴ Cf. 487-88, 601, 614-15, 629-30.

⁵ We can not assume, as Groeneboom does (above, note 2), either that the later historical custom that the archon basileus voted with the Areopagites (cf.

audience would probably expect an acquittal, but they would have as yet no clue how this acquittal would be achieved.

The voting begins immediately after Athena's instructions. During it the chorus and Apollo alternately speak ten couplets (711-30), and the chorus then adds a final triplet (731-33) just before Athena reveals her own decision. Now it has seemed likely to most critics (though it is not strictly necessary) that the ten couplets and the triplet are directly related to the votes of the jury, and if this is so, then the passage implies that precisely eleven human jurors vote before Athena: ten votes coincide with the ten couplets and the eleventh is accompanied by a triplet in order to leave time for Athena to step forward before she speaks. Other scenarios are possible, but this is certainly the most likely.⁶

After the human jurors have voted, Athena declares (734-35) that she will cast the final vote for Orestes:

ἐμὸν τόδ' ἔργον, λοισθήϊαν κρῖναι δίκην·
ψῆφον δ' Ὀρέστη τήνδ' ἐγὼ προσθήσομαι.

By τήνδε ψῆφον Athena indicates a specific voting-pebble, and she must either be pointing to it or, more likely, holding the pebble in her hand. Athena does not indicate precisely when she will cast her vote, but she states unconditionally her intention to vote (that is, not merely in case of a tie) and gives no indication that her vote is in any way different from the votes of the human jurors.

After stating her intention Athena next gives the reason for

Pollux 8.90) was also the rule in Aeschylus' time, or that if it was, Aeschylus necessarily imitated this practice in *Eumenides*. But this factor may add additional weight to my arguments.

⁶ Douglas Young assumes dramatic silences after both 731 and 733 and writes, "one can easily have 2 judges voting in the time of that triplet, which is equivalent to at least 4 lines. Or none." This is certainly correct, and it is also possible that there were eleven pairs of human jurors, but the point is why does Aeschylus give the Furies these three extra lines? The triplet destroys the equal balance which has thus far been maintained between the two sides and has the effect of providing a small counterweight to Athena's words which follow immediately, and such a situation makes sense only if there are eleven human jurors. On this point Kitto (above, note 3) presents an oversimplified case, but his amusing remarks are nonetheless worth reading.

her vote, that she favors the male (736-40), and she then adds (741), “and Orestes wins even if (the case) is decided with equal votes” (*νικᾷ δ’ Ὀρέστης καὶν ἰσόψηφος κριθῇ*). Although this statement might express the consequence of Athena’s vote (but in that case one would expect a stronger connective than *δέ*), it more likely indicates an additional piece of information: Athena has decided to vote for Orestes and she now adds that a tie vote will result in acquittal (as was customary—see below).

Finally Athena asks that the votes be counted (742-43), and after some brief remarks by the other actors (744-51) she announces that Orestes is acquitted because the votes are tied (752-53):

ἀνῆρ ὅδ’ ἐκπέφηνεν αἵματος δίκην·
ἴσον γάρ ἐστι τὰρίθμημα τῶν πάλων.⁷

There is not the slightest suggestion here that Athena’s vote is not included in this *ἴσον ἀρίθμημα*, nor is there any such suggestion when she later assures the Furies that the verdict was tied (*ἰσόψηφος δίκη*, 795). Throughout the scene the language consistently implies that Athena physically⁸ casts her vote and that this vote is tallied with the others to produce the tie. The language of 734-53 thus supports the implication of the preceding dialogue (711-33) that eleven human jurors vote before Athena.

This conclusion can be further supported by considering how the scene could have been staged, for if Athena’s vote were not included in the tie verdict, there would be no way to make this clear to the audience.⁹ There is no point at which she

⁷ The use of *πάλος* in 742 and again in 753 instead of *ψηφος* is of no significance for this discussion. Both words refer to the voting-pebbles themselves, and it is virtually certain that *πάλος* is used in these two cases *metri gratia*, since in both cases its position at the end of the line requires a short penult (cf. *Eum.* 32).

⁸ For some critics (e.g. Thomson) the assumption that Athena’s vote is merely symbolic supplies the explanation why it is not counted with the others. But Athena’s vote may be symbolic and yet it is still a vote, it still counts for Orestes in the real trial, and thus it must at some time be cast and counted in the real total of votes.

⁹ The audience could hardly be expected to count the number of human jurors as they voted.

can physically cast a vote into the urn¹⁰ without having it tallied together with the others,¹¹ and if she does not actually cast a vote but merely indicates somehow that her vote counts for Orestes, then the audience would necessarily be left in doubt about the matter.¹² If, on the other hand, Athena's vote is to be tallied with the others, then she simply holds up her pebble in 735 (τῇνδε ψῆφον) and then puts it in the urn.¹³ When the urns are then emptied and the pebbles counted, there would be no doubt at all about the status of her vote. Such staging is by far the simplest and would easily clarify any possible ambiguity in the spoken text.¹⁴

These considerations of staging thus provide a third argu-

¹⁰ Normally in the fifth century two urns were used in balloting, one for the votes for conviction and one for those for acquittal; see Boegehold, "Toward a Study of Athenian Voting Procedure," *Hesperia* 32 (1963) 366-74. It is thus likely that there were two urns on stage in *Eumenides*. The later representations of this scene (see below, note 14) all show only one urn on a table, though in several a second urn lies on its side on the ground below the table.

¹¹ If Athena announced first that the votes were equal and secondly that Orestes was acquitted, then she might possibly cast her vote between these two statements. But the wording of 752-53 does not allow this.

¹² The fullest attempt I have found to imagine the staging of this interpretation is Paley's in his note on 704 (= 734; *The Tragedies of Aeschylus*³ p. 624): "Pallas does not at this point drop her ballot into one or the other of the urns; indeed she could not do this without leaving the stage and approaching the thymele. It is even doubtful if she holds up any material vote to the eyes of the spectators, though τῇνδε favours the supposition. Her object is to ascertain first how the judges have voted, in order that she may in no way interfere with their judicial functions. Only, should the votes prove equal, she announces her intention of adding hers in favour of the culprit; that is, of declaring him acquitted. And this she does *verbally* at v. 722 [= 752], and without giving any actual vote either before or after the counting of the ballots." To this I would answer, (a) we do not know where in the theater the urns were placed, but if the previous jurors could cast their votes, there is no reason why Athena could not; (b) if "her object is to ascertain *first* how the judges voted," why does she not wait until their votes are counted before making her pronouncement? (c) she gives no indication whatever that she will vote "only should the votes prove equal" or that she will cast her vote in any way differently from the others; and (d) nothing in 752-53 indicates that she is casting a vote, "verbally" or otherwise.

¹³ Athena must cast her vote before 742. The most likely time is after 740.

¹⁴ It is worth noting that a painting of the scene by Timanthes (third quarter of the fifth century), which can be reconstructed from later copies, portrayed

ment for Hermann's view of the scene, and these arguments might be sufficient were it not for certain passages in later Greek authors which have misled some scholars.¹⁵ Much of this later testimony is ambiguous; that which is not supports both sides.¹⁶ There are for instance two ambiguous references to Orestes' acquittal in Euripides' *Iphigenia Taurica*: first Orestes says (965-66) that Pallas "reckoned equal votes with her arm" (ἴσας . . . ψήφους διηρίθμησε . . . ὠλένη), and later (1470-71) Athena says that she saved Orestes by "deciding the equal votes" (ψήφους ἴσας κρίνασα). The only explicit statement that in Orestes' trial Athena's vote was added to an equal division to produce acquittal is in Aelius Aristides (2, p 20-21D),¹⁷ and against this we have two passages in Lucian (*Pisc.* 21, *Harm.* 3) where the vote of Athena is called upon to produce a tie and thus save the defendant. We can only conclude from this that the ancient tradition about the vote of Athena is of no help in elucidating the scene in *Eumenides*.¹⁸

In particular we must not be misled by the fact that Euripides (*IT* 1471-72, *El.* 1265-60) treats Orestes' trial (however Athena's vote was counted) as the mythical precedent for the well-attested historical practice of acquitting a defendant

Athena with her hand directly over the mouth of the urn, indicating that she does indeed cast her vote; see German Hafner, *Iudicium Orestis* (Winkelmansprogramm 113, [Berlin 1958]). To the extent that this is evidence for the performance of *Eumenides*, it supports the simple staging for which I argue. (I am indebted to Professor E. L. Brown for bringing Hafner's monograph to my attention.)

¹⁵ See for instance Thomson (above, note 3).

¹⁶ In addition to the passages cited below, the Parian Marble (A25 according to Jacoby, *FGH* IIb, p. 996) and Apollodorus (*Epit.* 6.25) merely state that Orestes was acquitted with equal votes, and of two scholia to Aristides' *Panathenaicus*, which follow the tradition that Orestes was tried by the twelve gods (cf. Demosthenes 23.66), one (108.10) says Athena cast the twelfth vote and the other (108.7) that she cast the thirteenth.

¹⁷ Cf. Julian (*Or.* 3.114d), who states that "the vote of Athena" is added to those of the defendant if the votes of the jury are equal.

¹⁸ Particularly frustrating is the ambiguity of the scholiast at 735 (= 738 Wecklein): ἐγὼ προσθήσω τὴν ἐσχάτην ψήφον, ἢ ὅτι, ἂν (ἢ, ὅταν Hermann) ἴσαι γένωνται, νικᾷ ὁ κατηγορούμενος. Even if we accept Hermann's emendation, which is by no means certain, it is still ambiguous whether ἴσαι designates the votes with or without Athena's.

with a tie vote.¹⁹ Euripides was fond of linking mythical events to historical practices, but except for Aristides (*loc. cit.*) no other ancient discussion of this historical practice (see above, note 19) mentions Orestes' trial. And clearly there is no suggestion anywhere in *Eumenides* that Orestes' acquittal will set a precedent.

It is not known exactly when or how this legal practice arose, but it is likely to have originated not long after the founding of the Areopagus in the seventh century or earlier. Unlike other courts the Areopagus in classical times contained no specific number of jurors, for it was composed of all living former archons and the number of jurors would thus vary continually.²⁰ From the beginning there must occasionally have been tie votes in this body when an even number of jurors voted, and for such situations the Athenians must surely have devised a rule. Thus by 458 B.C. it was probably a firmly established practice that an equal vote in the Areopagus resulted in acquittal.

In view of this it would surprise no one in the audience to hear Athena announce that Orestes would be acquitted even if the votes are equal, nor would such a statement of common practice require any defense or justification. And Athena's reason for voting for Orestes applies only to this particular case and has nothing to do with the principle that an equal vote means acquittal. She simply announces that she will vote for Orestes, gives her reason for this vote, and then reminds the audience that Orestes will win even if the votes are equal. Her mention of this custom is dramatically effective for it prepares the audience to expect the tie which does in fact result, but it does not establish any precedent nor does it make her vote

¹⁹ To my knowledge the earliest statement (other than in Euripides) of the rule that equal votes produce an acquittal is in Antiphon, *De Caede Herodis* 51. There is a long discussion of the reasons for the rule in [Aristotle] *Problems* 29.13.

²⁰ Cf. Wilamowitz (above, note 2), 184. The scholiast on 743 (= 746 Wecklein) gives the number of Areopagites as 31, which was the size of the Areopagus in later Roman times: see Busolt-Swoboda, *Griechische Staatskunde*, 936.

qualitatively different from the others, although it is of course more important dramatically.

I have argued then that the text of *Eumenides* suggests that eleven jurors vote before Athena speaks in 735, that her vote is tallied with those of the other jurors to produce an equal division, and that a simple stage action could make this process perfectly clear to the audience. Moreover our historical knowledge of the Areopagus also supports this conclusion. Now if virtually all the evidence supports this one view, how is it, one might ask, that many scholars have accepted the opposite view? The reason is perhaps most clearly revealed by Sidgwick's comments in his note on this passage (*italics his*): "At first sight it would appear that Athena votes (1.735), that the votes are counted (1.742), and that *with Athena's* the votes are equal. But this would make the court an odd number: the majority of the judges *against* Orestes; and Athena interfering to turn a majority into a minority:—all of which are very unlikely, and spoil the impressive symbolism of the vote of the goddess . . . the human justice is *divided* . . . it is the goddess who gives the casting vote . . . when earthly *ψῆφοι* are equal *there is an unseen and divine vote for mercy.*"

In fact it seems to me not at all unlikely that the court contained an odd number of human jurors (as the historical Areopagus must have done on occasion), or that the majority of human jurors vote against Orestes (considering the weakness of his legal case and their fear of the Furies), or that Athena interferes to make the power of Zeus triumph (cf. 621, 797-99). Rather Sidgwick's real concern is for the "impressive symbolism" which he sees in the scene, and it is likely that a similar concern has affected the views of other scholars. This is not the place for a full interpretation of the scene, but I believe the symbolism can be just as impressive and the meaning just as elevated if we yield to the overwhelming weight of the evidence and accept Athena's vote as producing the tie verdict and thus acquitting Orestes.

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